IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

FRIDAY, THE 3RD NOVEMBER 2006 / 12TH KARTHIKA 1928

Bail Appl..No. 6489 of 2006()

CRIME NO.192/2006 OF VELLATHOOVAL POLICE STATION

PETITIONERS:ACCUSED 2ND AND 3RD

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1. SHAJI,
   S/O.CHANDRAN,AGED 25 YEARS,
   CHIYARATHIL POST,SUKAPURAM,(VIA) EDAPPAL,
   MALAPPURAM.

2. MUJEEB,
   S/O.ABU,AGED 27 YEARS, PALLATHU HOUSE,
   SUKAPURAM P.O.,EDAPPAL,MALAPPURAM.

BY ADV. SRI.BIJU M.JOHN

RESPONDENTS: RESPONDENT.

STATE OF KERALA REP. BY
SUB INSPECTOR OF POLICE,
VELLATHOOVAL POLICE STATION,IDUKKI DISTRICT,
THROUGH PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY DIRECTOR GENERAL OF PROSECUTION, SRI.P.G.THAMPI

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 03/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.M.JAMES, J.

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B.A. No. 6489 of 2006

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Dated this the 3rd day of November, 2006

O R D E R

The petitioners are accused Nos.2 and 3, in Crime No.192/2006 of Vellathooval Police Station, for the offence punishable under Sections 366, 376, 511 of 376 I.P.C., read with Section 34 of the Indian Penal Code. The petitioners apprehend arrest. Hence, this application filed under Section 438 Cr.P.C.

2. The brother-in-law of one Sandhya, gave a complaint before the Vellathooval Police Station, on 18/10/2006, basing on which the police registered the F.I.R, as under the caption 'man mising'. Further investigation has revealed that she was taken to Thiruvananthapuram, by the first accused, where, after inducing the victim that he would marry her, committed rape on her. He, thereafter, dropped her at Perumbavoor. Because of the spread of the rumour that although she posed as a model, the same had been used by someone having recorded in a C.D depicting her as a woman engaged in immoral activities, she was afraid to come back to

her house. She, therefore, contacted her known persons. Accordingly, she came in the company of the second accused as well as the third accused. While she was with them in a lodge, they have attempted to rape her after undressing her. They have also outraged her modesty. Thereafter, they took her back and dropped her at Perumbavoor. She have contacted some persons. Police came into the picture. On getting the information, they have altered the sections of offence, as stated above.

3. The Director General of Prosecution submits that being unable to bear the torture and the social stigma, the victim, a 17 year old girl, committed suicide. It is also submitted by the prosecution that the whole of Kerala is alarmed in the way in which a girl was taken to different places, subjected to rape and, thereafter, she committed suicide. The prosecution also brought to my notice the involvement of the administration of Kerala, so as to redress the grievance of the parents of the victim, and also to bring about a true investigation in the matter. It is also submitted that the Director General of Police, on the instructions of the administration, have deputed the Superintendent of Police, C.B.C.I.D., Kottayam, to directly investigate the matter.

Accordingly, the investigation is progressing. Therefore, it is submitted by the prosecution, that the questioning of the accused 2 and 3, the petitioners herein, are essential for the just completion of the investigation.

4. The learned counsel for the petitioners had vehemently argued that the petitioners are not guilty of the offence under Sections 376, 511 of 376 or even 366 of the Indian Penal Code. At the maximum, the offence that may be attracted, as per the ingredients that have been brought out by the prosecution, is only under Section 354 I.P.C. The learned counsel for the petitioners also took me through the statement of the victim recorded under Section 164 Cr.P.C by the Judicial Magistrate of the First Class, Adimaly, to drive home his point that the petitioners are in no way connected with any of the allegations, made by the prosecution. Hence, the learned counsel for the petitioners prayed that the petitioners may be granted a pre-arrest order.

5. I have gone through Section 164 Cr.P.C statement recorded by the Magistrate, the records in relation to the crime maintained by the police, the arguments advanced by the Director General of Prosecution and the counsel for the petitioners.

6. Without entering into any discussion on the merit of the matter, the ingredients of the offence and the overt acts of each petitioner, accused 2 and 3, I direct the petitioners to surrender before the Investigating Officer, on 13/11/2006, between 9.30 a.m and 10 a.m.

7. The Investigating Officer shall interrogate the petitioners as per the law and, thereafter, he shall produce the petitioners before the court below.

8. On production, the learned Magistrate shall hear the bail application(s) that may be filed by the petitioners, as well as the application for custodial interrogation, if any, filed by the prosecution and pass orders on merit, according to the law, considering the submissions made and the contentions raised before this Court together with the documents that may be filed before that court by either side.

(J.M.JAMES)
Judge

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